

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC. and NICE  
SYSTEMS LTD,

Plaintiffs,

v.

WITNESS SYSTEMS, INC.

Defendant.

Civil Action No. 06-311

**DEFENDANT WITNESS SYSTEMS, INC.'S AMENDED PROPOSED FORM OF  
SPECIAL JURY VERDICT**

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**ATTORNEYS FOR DEFENDANT  
WITNESS SYSTEMS, INC.**

Dated: January 8, 2008

**DEFENDANT'S AMENDED PROPOSED FORM OF SPECIAL JURY VERDICT**

We, the jury in the above-titled action, find the following special verdict on the questions submitted to us:

**FOR EACH OF THE SIX PATENTS, PLEASE ANSWER BOTH THE INFRINGEMENT AND INVALIDITY QUESTIONS:**

**THE '570 PATENT**

- 1) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,249,570?

Claim 6      YES \_\_\_\_\_      NO \_\_\_\_\_

- 2) Do you find by clear and convincing evidence that U.S. Patent No. 6,249,570 is invalid?

Claim 6      YES \_\_\_\_\_      NO \_\_\_\_\_

- 3) If you found that Witness Systems infringed U.S. Patent No. 6,249,570, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 6      YES \_\_\_\_\_      NO \_\_\_\_\_

**THE '371 PATENT**

- 4) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 5,396,371?

Claim 1      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 8      YES \_\_\_\_\_      NO \_\_\_\_\_

- 5) Do you find by clear and convincing evidence that U.S. Patent No. 5,396,371 is invalid?

Claim 1      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 8      YES \_\_\_\_\_      NO \_\_\_\_\_

- 6) If you found that Witness Systems infringed U.S. Patent No. 5,396,371, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 8      YES \_\_\_\_\_      NO \_\_\_\_\_

**THE '109 PATENT**

- 7) Do you find by a preponderance of the evidence that Witness Systems infringed the U.S. Patent No. 7,010,109?

Claim 1      YES \_\_\_\_\_ NO \_\_\_\_\_

Claim 6      YES \_\_\_\_\_ NO \_\_\_\_\_

- 8) Do you find by clear and convincing evidence that U.S. Patent No. 7,010,109 is invalid?

Claim 1      YES \_\_\_\_\_ NO \_\_\_\_\_

Claim 6      YES \_\_\_\_\_ NO \_\_\_\_\_

- 9) If you found that Witness Systems infringed U.S. Patent No. 7,010,109, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1      YES \_\_\_\_\_ NO \_\_\_\_\_

Claim 6      YES \_\_\_\_\_ NO \_\_\_\_\_

**THE '372 PATENT**

- 10) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,775,372?

Claim 1      YES \_\_\_\_\_ NO \_\_\_\_\_

Claim 15      YES \_\_\_\_\_ NO \_\_\_\_\_

Claim 33      YES \_\_\_\_\_ NO \_\_\_\_\_

- 11) Do you find by clear and convincing evidence that U.S. Patent No. 6,775,372 is invalid?

Claim 1      YES \_\_\_\_\_ NO \_\_\_\_\_

Claim 15      YES \_\_\_\_\_ NO \_\_\_\_\_

Claim 33      YES \_\_\_\_\_ NO \_\_\_\_\_

12) If you found that Witness Systems infringed U.S. Patent No. 6,775,372, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 15      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 33      YES \_\_\_\_\_      NO \_\_\_\_\_

**THE '920 PATENT**

13) Do you find by a preponderance of the evidence that Witness Systems infringed U.S. Patent No. 6,870,920?

Claim 1      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 16      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 21      YES \_\_\_\_\_      NO \_\_\_\_\_

14) Do you find by clear and convincing evidence that U.S. Patent No. 6,870,920 is invalid?

Claim 1      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 16      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 21      YES \_\_\_\_\_      NO \_\_\_\_\_

15) If you found that Witness Systems infringed U.S. Patent No. 6,870,920, do you find by clear and convincing evidence that Witness Systems' infringement was willful?

Claim 1      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 16      YES \_\_\_\_\_      NO \_\_\_\_\_

Claim 21      YES \_\_\_\_\_      NO \_\_\_\_\_

**PLEASE STOP HERE IF YOU HAVE FOUND *NONE* OF THE PATENTS ABOVE TO BE BOTH INFRINGED AND NOT INVALID**

**PLEASE CONTINUE IF YOU HAVE FOUND ONE OR MORE OF THE PATENTS ABOVE TO BE BOTH INFRINGED AND NOT INVALID**

- 16) If you found that a claim of U.S. Patent No. 6,249,570 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ \_\_\_\_\_

- 17) If you found that a claim of U.S. Patent No. 5,396,371 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ \_\_\_\_\_

- 18) If you found that a claim of U.S. Patent No. 7,010,109 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ \_\_\_\_\_

- 19) If you found that a claim of U.S. Patent No. 6,775,372 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ \_\_\_\_\_

- 20) If you found that a claim of U.S. Patent No. 6,870,920 is both infringed and not invalid, what amount of reasonable royalty, if any, do you award to NICE for infringement of that patent?

\$ \_\_\_\_\_

- 21) If you found that NICE is entitled to lost profits damages, what amount of lost profits do you award to NICE for infringement of that patent?

\$ \_\_\_\_\_

22) Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit for infringement, and prejudiced Witness Systems, such that the defense of laches applies?\*

Yes \_\_\_\_ No \_\_\_\_

23) Do you find by a preponderance of evidence that NICE unreasonably delayed filing this lawsuit, Witness Systems relied on that conduct, and Witness Systems was prejudiced, such that the defense of equitable estoppel applies?\*

Yes \_\_\_\_ No \_\_\_\_

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\* Subject to Pending Motion *in Limine*.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of January, 2008, I electronically filed with the Clerk of Court the foregoing Defendant Witness System Inc.'s Amended Proposed Form of Special Jury Verdict using CM/ECF which will send electronic notification of such filing(s) to the below-listed Delaware counsel. In addition, the filing will also be sent via hand delivery.

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*Attorneys for Plaintiffs  
Nice Systems Ltd. and Nice Systems, Inc.*

I also certify that on January 8, 2008, I have sent by electronic mail and U.S. First Class Mail, the document(s) to the following non-registered participants:

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/s/Kyle Wagner Compton  
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